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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIN RICHARDSON,

Defendant and Appellant.

B207485

(Los Angeles County  
Super. Ct. No. BA260057)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Mark V. Mooney, Judge. Affirmed with modifications.

Alan Stern, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Victoria B. Wilson and Noah P. Hill, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Erin Richardson appeals from a judgment entered after a jury found him guilty of voluntary manslaughter. (Pen. Code, § 192.)<sup>1</sup> The jury found true that appellant had personally used a firearm during the commission of the offense (§ 12022.5, subd. (a)). The trial court found true that appellant had suffered three prior convictions within the meaning of sections 667, subdivisions (b) through (i), 1170.12, subdivisions (a) through (e) (the Three Strikes Law) and that appellant had suffered two prior serious felony convictions. (§ 667, subd. (a)(1).)

The trial court sentenced appellant to 39 years to life in state prison as follows: 25 years to life for voluntary manslaughter pursuant to the Three Strikes Law; two 5-year terms for the prior serious felony convictions (§ 667, subd. (a)(1)); and a four-year term for the firearm-use enhancement (§ 12022.5, subd. (a)). Appellant received a total of 1,280 days of actual presentence custody credit and no days of presentence conduct credit.

Appellant contends, and the People concede, that the trial court erred when it failed to award appellant presentence custody credit. We affirm with modifications.

### **Facts and Procedural Background**

On December 22, 1997, appellant shot Daniel Williams (Williams), a male transvestite prostitute, once in the back of the head after Williams had performed oral copulation on appellant and appellant subsequently realized that Williams was a man. Los Angeles Police Department officers recovered a condom and two expended .25-caliber bullet shells from the scene of the crime. A .25-caliber bullet was recovered from Williams's head during the autopsy. Appellant and Williams's DNA profile matched the DNA profile found on the condom. Appellant confessed to shooting Williams. He was sentenced on March 21, 2008.

During the sentencing hearing the trial court stated: "1280 actual days. [Appellant] will receive credit for his actual days in this matter." Defense counsel then

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<sup>1</sup> All subsequent references are to the Penal Code unless otherwise stated.

asked: “[w]hat’s good time work time on 1280?” The trial court stated: “I believe pursuant to People versus Swavick, it is actual days.” Defense counsel then stated: “Your Honor, because the—I am aware that when the initial charge is murder, then the defendant is not entitled to good time work time credits. May I inquire as to whether or not that applies when the principal offense is voluntary [manslaughter]?” The trial court responded: “I think pursuant to the Third Strike Law, there is not good time work time credit.”

### **Discussion**

#### **The trial court erred in failing to award appellant presentence custody credit**

Appellant contends, and the People concede, that the trial court erred when it failed to award him presentence conduct credit pursuant to section 2933.1.

Pursuant to section 2933.1,<sup>2</sup> the maximum credit that may be earned against a period of confinement following arrest and prior to placement in custody shall not exceed 15 percent of the actual period of confinement. The trial court, however, did not award any presentence conduct credit to appellant on the basis that the Three Strikes Law prohibits good time work time credit.

The trial court erred because any limitations under the Three Strikes Law on a defendant’s ability to earn credit applies to post-sentence conduct credits only. “[W]hen

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<sup>2</sup> Section 2933.1 provides in part: “(a) Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933. (b) The 15-percent limitation provided in subdivision (a) shall apply whether the defendant is sentenced under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2 or sentenced under some other law. However, nothing in subdivision (a) shall affect the requirement of any statute that the defendant serve a specified period of time prior to minimum parole eligibility, nor shall any offender otherwise statutorily ineligible for credit be eligible for credit pursuant to this section. (c) Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a).”

limiting the credit rights of offenders sentenced thereunder, the Three Strikes law . . . expressly refers only to ‘*postsentence* . . . credits,’ i.e., those “‘awarded pursuant to [a]rticle 2.5’” [citation] and ‘does not address *presentence* . . . credits’ for Three Strikes defendants [citation, italics added].” (*People v. Buckhalter* (2001) 26 Cal.4th 20, 32.) Moreover, it is the nature of a defendant’s current conviction and not his sentence under the Three Strikes Law that triggers application of a limitation on his presentence conduct credit. (*People v. Thomas* (1999) 21 Cal.4th 1122, 1130.) As the People concede, there are no existing limitations on a defendant’s ability to earn presentence conduct credit that apply to appellant.

### **DISPOSITION**

The judgment is modified to reflect an award of 192 days of presentence custody credit. The trial court is ordered to send a certified copy of a corrected abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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\_\_\_\_\_, P. J.

BOREN

We concur:

\_\_\_\_\_, J.

DOI TODD

\_\_\_\_\_, J.

CHAVEZ